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7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4761

12 **CARLOS VALENCIA**  
13 **451 Yorbita Road**  
**La Puente, CA 91744**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
15 **58672**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

22 2. On or about September 24, 2004, the Board issued Pharmacy Technician Registration  
23 No. TCH 58672 to Carlos Valencia (Respondent). The Pharmacy Technician Registration was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on  
25 December 31, 2015, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.



1           7.    Section 4300 provides in pertinent part, that every license issued by the Board is  
2 subject to discipline, including suspension or revocation.

3           8.    Section 4300.1 states:

4           "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
5 operation of law or by order or decision of the board or a court of law, the placement of a license  
6 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
7 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
8 proceeding against, the licensee or to render a decision suspending or revoking the license."

9           9.    Section 4301 states, in pertinent part:

10          "The board shall take action against any holder of a license who is guilty of unprofessional  
11 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
12 Unprofessional conduct shall include, but is not limited to, any of the following:

13          .....

14          "(j)   The violation of any of the statutes of this state, or any other state, or of the United  
15 States regulating controlled substances and dangerous drugs.

16          .....

17          "(l)   The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or  
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment.

6 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
7 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
8 federal and state laws and regulations governing pharmacy, including regulations established by  
9 the board or by any other state or federal regulatory agency."

10 10. Section 4021 provides:

11 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
12 11053) of Division 10 of the Health and Safety Code.

13 11. Section 4060 of the Code states:

14 "No person shall possess any controlled substance, except that furnished to a person upon  
15 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
16 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
17 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
18 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
19 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
20 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
21 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
22 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
23 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
24 labeled with the name and address of the supplier or producer.

25 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
26 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
27 devices."

28 //

1 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1770, states:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license  
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
7 licensee or registrant to perform the functions authorized by his license or registration in a manner  
8 consistent with the public health, safety, or welfare."

9 **CONTROLLED SUBSTANCE**

10 13. "Marijuana," is a schedule I controlled substance as defined in Health and Safety  
11 Code section 11054, subdivision (d)(13) and is categorized a dangerous drug pursuant to section  
12 4022.

13 **COST RECOVERY**

14 14. Section 125.3 provides, in pertinent part, that the Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 15. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
21 490, and 4060, in conjunction with California Code of Regulations, title 16, section 1770, in that  
22 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
23 duties of a pharmacy technician, as follows:

24 a. On or about April 12, 2013, after pleading nolo contendere, Respondent was  
25 convicted of one felony count of violating Health and Safety Code section 11359 [possession of  
26 Marijuana for sale] and one felony count of Health and Safety Code section 11357, subdivision  
27 (a) [possession of concentrated cannabis] in the criminal proceeding entitled *The People of the*  
28 *State of California v. Carlos Valencia* (Super. Ct. Los Angeles County, 2013, No. KA099506).

1 The Court sentenced Respondent to three (3) years formal probation, ordered him to serve 180  
2 days in county jail, and pay fines and fees.

3 b. The circumstances surrounding the conviction are that on or about September 22,  
4 2012, a Los Angeles County Sheriff's Department deputy stopped Respondent's car for a series  
5 of traffic violations. When the deputy approached the car, he noted a pungent smell of marijuana  
6 emitting from the vehicle. The deputy located a black backpack in the back seat of Respondent's  
7 car that contained a large "Ball" glass jar filled with marijuana. During a pat down search of  
8 Respondent, the deputy recovered \$1,470 in several small denominations and a cell phone. In the  
9 cell phone, the deputy found text messages indicating Respondent had delivered marijuana to at  
10 least two (2) people. Given the fact Respondent had a large amount of cash in small  
11 denominations, a large quantity of marijuana, and the text messages, the deputy formed the  
12 opinion Respondent was selling marijuana.

### 13 SECOND CAUSE FOR DISCIPLINE

#### 14 (Illegal Possession of a Controlled Substance)

15 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) and  
16 (o) for violating section 4060 in that on or about September 22, 2012, Respondent was found to  
17 be in illegal possession of a controlled substance. Complainant refers to, and by this reference  
18 incorporates, the allegations set forth above in paragraph 15, subparagraph (b), as though set forth  
19 fully.

### 20 DISCIPLINE CONSIDERATIONS

21 17. To determine the appropriate degree of discipline in this matter, Complainant alleges  
22 as follows:

23 a. On or about August 21, 2009, Respondent was convicted of one misdemeanor count  
24 of Vehicle Code section 23222, subdivision (b) [possession of one ounce or less of marijuana] in  
25 the criminal proceeding entitled *The People of the State of California v. Carlos Valencia* (Super.  
26 Ct. Los Angeles County, 2009, No. 9JB04763.) The Court ordered Respondent to pay a fine. The  
27 circumstances surrounding the conviction are that on or about May 22, 2009, sheriff's deputies  
28 stopped Respondent's car for a traffic violation. When a deputy approached Respondent's side

1 window, he could smell the odor of marijuana emitting from the car. The deputy asked  
2 Respondent if he had any marijuana. The Respondent handed his cigarette to the deputy and said  
3 that was "all the weed I have."

4 b. On or about September 12, 2008, Respondent was convicted of one misdemeanor  
5 count of violating Penal Code section 12031, subdivision (a)(1) [carry loaded firearm in a public  
6 place] in the criminal proceeding entitled *The People of the State of California v. Carlos Valencia*  
7 (Super. Ct. Los Angeles County, 2008, No. 8RI04817.) The Court sentenced Respondent to serve  
8 20 days in Los Angeles County Jail and placed him on 3 years probation, with terms and  
9 conditions. The circumstances surrounding the conviction are that on or about August 2, 2008,  
10 Respondent was a passenger in a car stopped by the police. Upon a search of the car, officers  
11 found a glass jar filled with marijuana and a loaded Glock 17 nine millimeter gun. Respondent  
12 admitted that the marijuana and the firearm were his. He stated he had the firearm for protection  
13 since he was carrying marijuana.

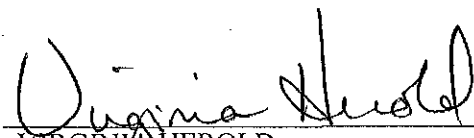
14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 58672, issued  
18 to Carlos Valencia;
- 19 2. Ordering Carlos Valencia to pay the Board the reasonable costs of the investigation  
20 and enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: \_\_\_\_\_

11/10/14



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant